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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,643	09/30/2003	Victor T. Massey	081589-0306133	1141
28410 7590 01/11/2008 BERENATO, WHITE & STAVISH, LLC 6550 ROCK SPRING DRIVE SUITE 240 BETHESDA, MD 20817			EXAMINER STRIMBU, GREGORY J	
			ART UNIT 3634	PAPER NUMBER
			MAIL DATE 01/11/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/673,643

Applicant(s)

MASSEY ET AL.

Examiner

Gregory J. Strimbu

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) 22-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 32-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The examiner attempted to contact the applicant on January 4, 2008 to conduct an interview per the applicant initiated interview request form. Since the applicant was unavailable, the following Office action has been prepared.

### ***Election/Restrictions***

Applicant's election with traverse of Group I in the reply filed on May 14, 2007 is acknowledged. The traversal is on the ground(s) that claim 40 has been amended to remove the recitation "a hardware component disposed in the wooden insert at the opening of the metallic frame". Therefore, said recitation can no longer be used as the basis for maintaining the restriction requirement. This is not found persuasive because the recitations of the interior flange and the exterior flange in the subcombination claim 42 are not required by the combination claim 23.

The requirement is still deemed proper and is therefore made FINAL.

Claims 22-31 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 14, 2007.

### ***Claim Rejections - 35 USC § 112***

Claims 1-21 and 32-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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Recitations such as “metallic rail” on line 4 of claim 1 render the claims indefinite because it is unclear what the applicant is attempting to set forth. The recitation implies that the rail is a single element and comprises a metal, however, figure 2 shows that the rail comprises two metallic elements 32 and 34 connected to one another via a plastic element 72. Recitations such as “to maintain an air gap” on line 10 of claim 1 render the claims indefinite because it is unclear how the spacer 62 maintains an air gap. Note that the spacer 62 does not engage the passive door 16. At best, it appears that the spacer forms an air gap between a distal end thereof and the passive door 16.

Recitations such as “to engage the interior surface of the passive door” on line 14 of claim 1 render the claims indefinite because it is unclear if the applicant is claiming the subcombination of an astragal assembly or the combination of an astragal assembly and a passive door. The preamble of claim 1 implies the subcombination while the positive recitation of the passive door on line 14 of claim 1 implies the combination.

Recitations such as “where said exterior portion meets said side portion” on lines 15-16 of claim 1 render the claims indefinite because it is unclear how the exterior portion 34 can meet the side portion 36 when the gasket 72 is disposed therebetween. Recitations such as “an interior flange” on line 2 of claim 11 render the claims indefinite because it is unclear if the applicant is referring to the interior flange set forth above or is attempting to set forth another interior flange in addition to the one set forth above. Also see “an interior surface” on lines 2-3 of claim 11, “an exterior flange” on line 2 of claim 14, “an exterior surface” on lines 2-3 of claim 14, “an exterior flange” on line 2 of claim

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15, "an interior flange" on line 2 of claim 15. Recitations such as "the second side" on lines 5-6 of claim 32 render the claims indefinite because they lack antecedent basis.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

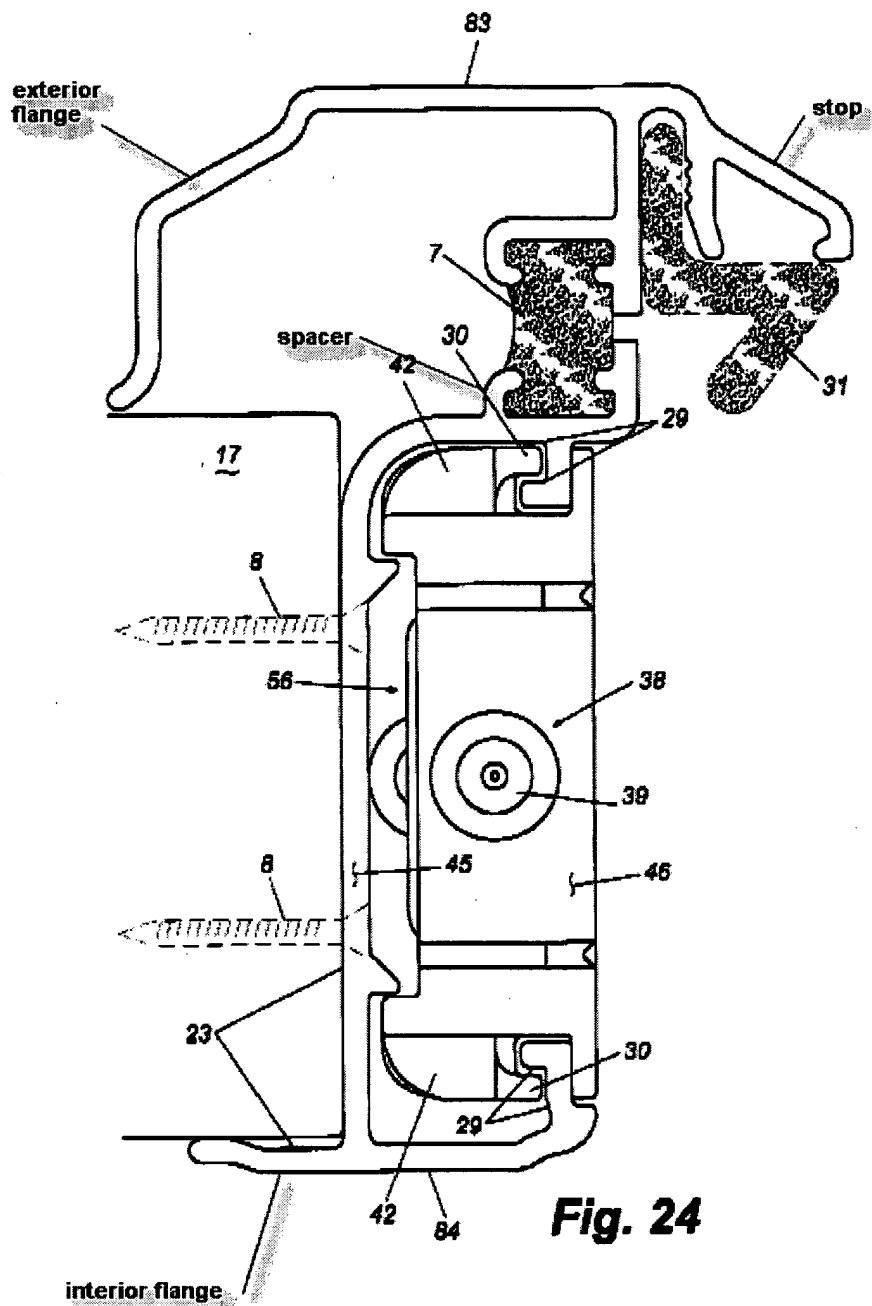
Claims 1-21 and 32-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massey et al. (6491326) in view of Hendrickson et al. (US 6684571). Massey et al. discloses an astragal assembly 27 for attachment to a passive door 17 having an interior surface, an exterior surface opposite to the interior surface, and an outer edge extending from the exterior surface to the interior surface, comprising: a metallic rail 28 having an exterior portion 83, an interior portion 84 spaced from and opposed to the exterior portion, and a side portion 45 extending between the exterior portion and the interior portion disposed opposite the outer edge of the passive door when the astragal assembly is affixed thereto, a spacer (labeled below) extending outwardly from a major surface of the side portion and having a distal end to maintain an air gap between a surface of the outer edge of the passive door and the side portion of the metallic rail when the astragal assembly is affixed thereto to allow air flow between the outer edge of the passive door and the side portion of the metallic rail, an interior flange (labeled below) extending away from where said interior portion meets

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said side portion to engage the interior surface of the passive door, and an exterior flange (labeled below) opposite said interior flange and extending away from where said exterior portion meets said side portion to engage the exterior surface of the passive door, wherein an elongated open channel is defined in the metallic rail with sides formed by the exterior portion and the interior portion and a base formed by the side portion, the elongated open channel having an opening extending between the exterior portion and the interior portion and opposed to the side portion; and an insert 25 retained within the elongated open channel in the metallic rail, a stop (labeled below), a gasket 31, a thermal break 7, hooks 29 Massey et al. is silent concerning a wooden insert.

However, Hendrickson et al. discloses an insert 76a having a wood construction.

It would have been obvious to one of ordinary skill in the art to provide the insert of Massey et al. with a wood construction, as taught by Hendrickson et al., to improve the aesthetics of the astragal assembly.



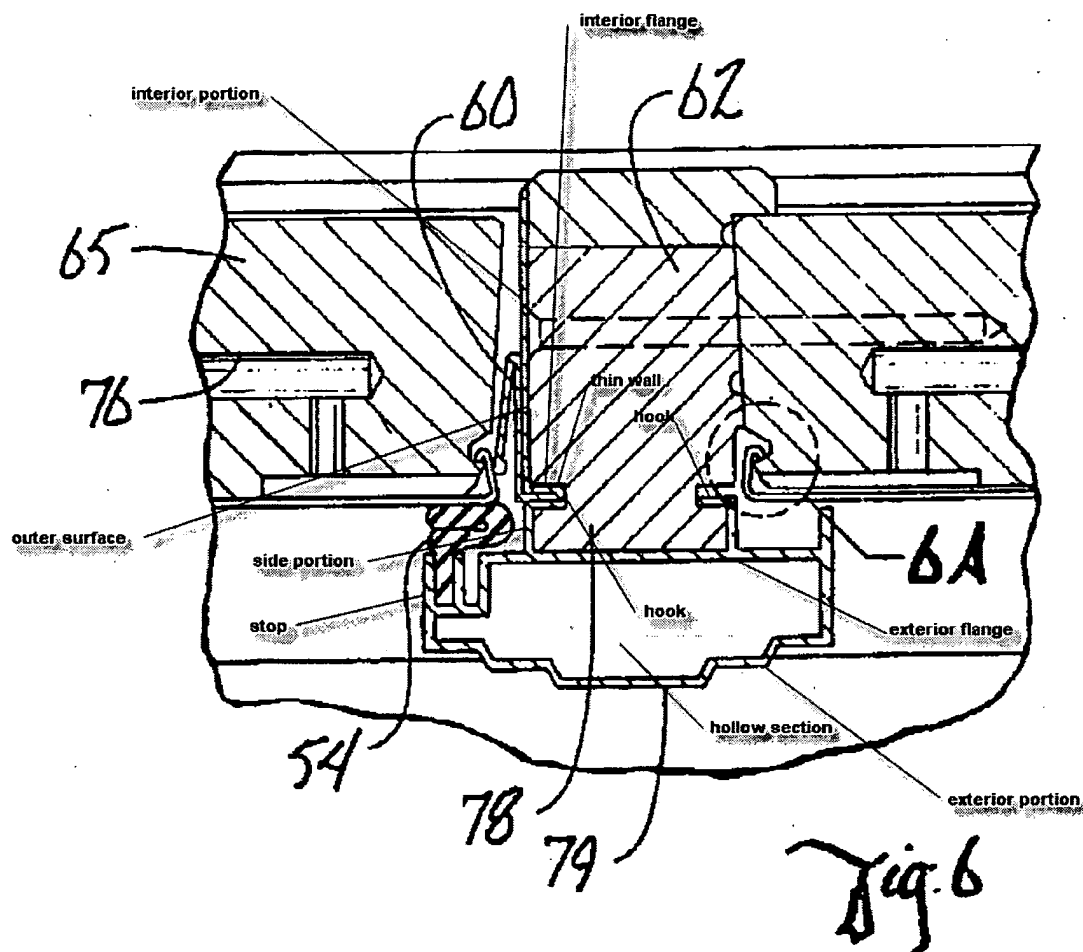
**Fig. 24**

Claims 32-36 and 38 are rejected under 35 U.S.C. 102(b) as being anticipated by Hagemeyer et al. (US 4573287). Hagemeyer et al. discloses an astragal comprising: an extruded aluminum rail 79 with an exterior portion (labeled below), an exterior flange

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(labeled below) extending from a first side of said exterior portion, and a stop (labeled below) extending from a second side of said exterior portion opposite to the first side, an interior portion (labeled below) spaced from and opposed to the exterior portion, an interior flange extending from the second side of the interior portion opposite from and substantially parallel to the exterior flange, and a side portion (labeled below) extending between where the exterior portion meets the exterior flange and where the interior portion meets the interior flange, the side portion having a fastening formation and a spacer 60 extending outwardly from a surface thereof; and a wooden insert member 78 retained substantially within a channel in the extruded aluminum rail formed by the exterior portion, the interior portion and the side portion, wherein the insert presents an outer surface (labeled below) for attachment to hardware, and the spacer extends away from the channel, a hollow section (labeled below) and hook (labeled below), the interior portion includes a thin wall (labeled below) and a hook (labeled below) extending into the channel, the side portion includes a thermal break comprising the air pocket formed between the side portion and the seal, a strike plate (not shown).

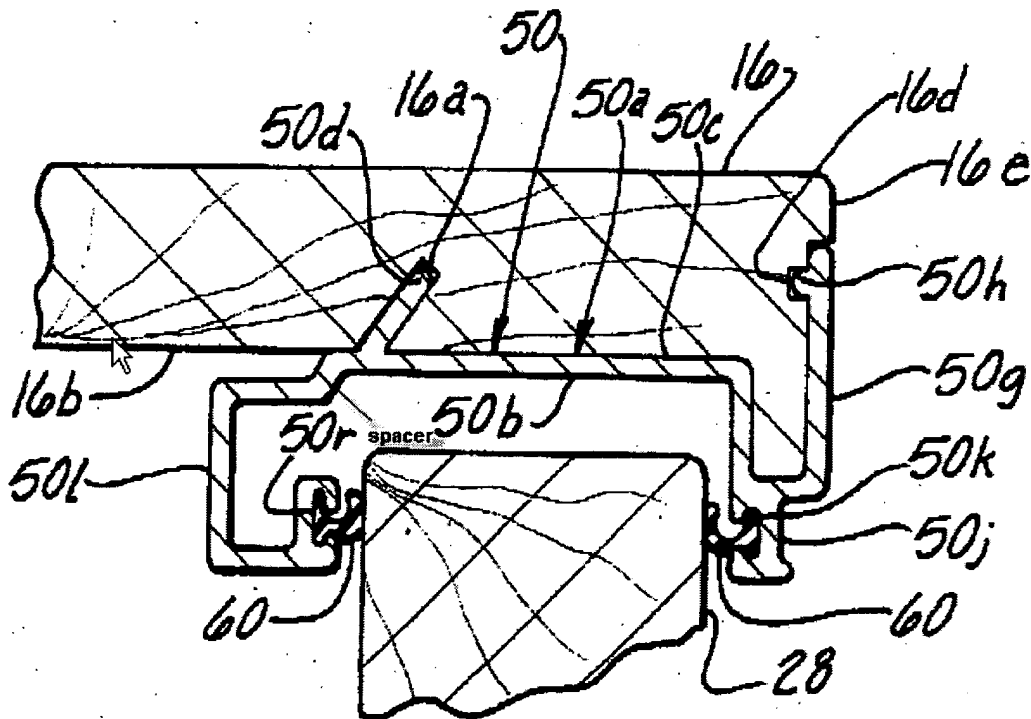




Claims 42-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Clancy et al. Clancy et al. discloses an astragal assembly usable with an active door and a passive door having an exterior surface, an interior surface opposite to the exterior surface, and an outer end disposed between the exterior surface and the interior surface, the assembly comprising: a frame 48 including an interior portion 48d, an exterior portion 48g spaced apart from and opposed to the interior portion, a side portion 48b extending between the interior portion and the exterior portion opposite to

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the outer end of the passive door when the astragal assembly is attached thereto, an interior flange 48l extending from where the interior portion meets the side portion to engage the interior surface of the passive door when the astragal assembly is attached thereto, an exterior flange 48j extending from where the exterior portion meets the side portion to engage the exterior surface of the passive door when the astragal assembly is attached thereto, and a channel formed by the exterior portion, the interior portion, and the side portion of the frame; an a door stop 48q extending from the exterior portion of the frame on the opposite side from where the exterior flange is located, and an insert member 12 disposed in the channel and having a surface exposed to the active door when the astragal assembly is attached to the passive door, a spacer (labeled below), the insert member is wooden and the frame is metallic based on the cross sectional shading as shown in figure 3.



### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 37 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hagemeyer et al. as applied to claims 32-36 and 38 above, and further in view of Massey et al. Massey et al. discloses an astragal 19 including a strike plate 21.

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It would have been obvious to one of ordinary skill in the art to provide Hagemeyer et al. with a strike plate, as taught by Massey et al., to be able to securely latch the door to the astragal.

### ***Response to Arguments***

Applicant's arguments filed October 31, 2007 have been fully considered but they are not persuasive.

The applicant's comments concerning claims 1-21, 39-41 and 46-48 are moot in view of the new grounds of rejection.

With respect to the applicant's arguments concerning Hagemeyer et al. and claims 32-36 and 38, the examiner respectfully disagrees. Hagemeyer et al., as set forth in the rejection above, discloses all of the elements of amended claims 32-36 and 38.

With respect to the applicant's comments concerning Clancy et al., the examiner respectfully disagrees. Clancy et al. discloses a door stop 48q as shown in figure 4. The applicant's comments concerning the stop engaging the active door and the side portion are not persuasive since claim 42 recites the subcombination of an astragal rather than the combination of an astragal and a door system. Additionally, Clancy et al. discloses an interior flange 48L and an exterior flange 48j both extending from where the interior portion and the exterior portion meet the side portion, respectively.

**Conclusion**

**THIS ACTION IS NOT MADE FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory J. Strimbu whose telephone number is 571-272-6836. The examiner can normally be reached on Monday through Friday 8:00 to 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571-272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gregory J. Strimbu  
Primary Examiner  
Art Unit 3634  
January 4, 2008